

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, an Order to retain the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 12, 2010, the Landlord served each Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were submitted in the Landlord's evidence. Each Tenant is deemed to have received the Notice of Direct Request package on February 17, 2010, five days after they mailed in accordance with section 90 of the Act. Based on the written submissions of the Landlord, I find that the Tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent, and b) to keep the security deposit, under sections 72 and 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following documentary evidence submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;
- A copy of a residential tenancy agreement which was signed by the parties in January, 2008 for a month to month tenancy effective February 1, 2009, for the

monthly rent of \$795.00 due on 1st of the month. There is no amount of a security deposit listed on this tenancy agreement; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 3, 2010, with an effective vacancy date of February 13, 2010 due to \$795.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the Tenants' door on February 3, 2010 at 4:35 p.m., in the presence of a witness. The Tenants are deemed to have received the 10 Day Notice on February 6, 2010, three days after it was posted to the door in accordance with section 90 of the Act.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenants have been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenants on February 6, 2010 and the effective date of the notice is February 16, 2010, pursuant to section 90 of the Act. I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I approve the Landlord's request for an Order of Possession.

Monetary Claim –The Landlord has applied for a monetary order for \$795.00 and requested to retain the security deposit in partial satisfaction of this claim however there is no indication on the tenancy agreement or in the Landlord's application of how much of a security deposit was paid by the Tenants or the date in which it was paid.

In the absence of documentary evidence regarding the security deposit I find that the Landlord's claim for a monetary order does not meet the requirements for the direct request process and I hereby dismiss the Landlord's monetary claim, with leave to reapply.

Filing fee - \$50.00. I find that the Landlord has partially succeeded with his claim, therefore I award recovery of the \$50.00 filing fee.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the respondent Tenants and is enforceable through the Provincial Court as an order of that Court.

The Tenants' security deposit, currently held in trust by the Landlord, is to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 19, 2010.

Dispute Resolution Officer